

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEE CROUTHERS,

Plaintiff,

v.

COORDINATOR SHARON K. ZUNKER and
HSU MANAGER BECKY DRESSLER,

Defendants.

ORDER

07-C-655-bbc

On December 5, 2008 I denied plaintiff's motion for summary judgment and granted defendants' motion for summary judgment on plaintiff's claim that defendants violated his Eighth Amendment rights by failing to properly treat his Hepatitis C. Judgment was entered for defendants and the case was closed. Now plaintiff Lee Crouthers has filed a motion to strike defendants' exhibits and affidavits submitted in support of their motion for summary judgment. He asserts that defendants submitted medical records from 2004 and after February 2008 and that his signed authorization for use of medical information covered only medical records dating from January 2005 to December 15, 2008.

Plaintiff's time for objecting to any evidence has long since passed. Defendants filed

their motion and accompanying evidence on October 3. If plaintiff believed that any of defendants' submissions were improper, he should have raised that objection in the response he filed on October 31. Because I have already decided the motion for summary judgment, plaintiff's motion to strike will be denied as moot.

Moreover, even if I had concluded that some or even all of defendants' evidence was inadmissible, it would not have changed the result of this case because plaintiff submitted no evidence showing that defendants were deliberately indifferent to his health. It was plaintiff's burden to show that defendants were violating his Eighth Amendment rights, not defendants burden to show that they acted appropriately. Borello v. Allison, 446 F.3d 742, 748 (7th Cir. 2006).

ORDER

IT IS ORDERED that plaintiff's motion to strike defendants' affidavits and exhibits, dkt. #79, is DENIED as moot.

Entered this 9th day of December, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge